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**THIS DISPOSITION
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Paper No. 13
JQ

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Remington Hotel Corporation**

Serial Nos. 75/304,383 and 75/305,882

Scott J. Garber of Howrey Simon Arnold & White for
applicant.

Robin S. Chosid, Trademark Examining Attorney, Law Office
102 (Thomas Shaw, Managing Attorney).

Before Quinn, Bucher and Bottorff, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

Applications were filed by Remington Hotel Corporation
to register the marks REMINGTON HOTEL CORPORATION ("HOTEL
CORPORATION" disclaimed) and REMINGTON SUITES HOTEL
CORPORATION ("SUITES HOTEL CORPORATION" disclaimed) for, as
amended, "hotel management and consultation for others" (in
International Class 35) and "food preparation and bar

services; and catering services" (in International Class 42).¹

The Trademark Examining Attorney refused registration under Section 2(d) on the ground that applicant's marks, when applied to applicant's services, so resemble two marks previously registered by the same entity. The cited marks are as follows:

and REMINGTON'S ROADHOUSE, both for "restaurant services."²

When the refusals were made final, applicant appealed. Applicant and the Examining Attorney filed briefs. An oral hearing was not requested. Because of the essentially identical issues involved in these appeals, the Board shall decide them in one opinion.

¹ Respectively, application Serial No. 75/304,383, filed June 9, 1997, alleging first use on November 19, 1992 and first use in interstate commerce on March 22, 1993, and application Serial No. 75/305,882, filed June 9, 1997, based on an allegation of a bona fide intention to use the mark in commerce.

² Respectively, Registration No. 2,133,669, issued February 3, 1998 pursuant to Section 2(f) ("ROADHOUSE EST. 1992" disclaimed), and Registration No. 2,183,625, issued August 25, 1998 pursuant to Section 2(f) ("ROADHOUSE" disclaimed).

The Examining Attorney maintains that the involved marks are dominated by the identical term "REMINGTON" and that the marks are similar in overall commercial impression. The Examining Attorney also asserts that the services are related, citing to a prior Board decision involving hotel and restaurant services. Lastly, the Examining Attorney is not persuaded by the absence of actual confusion between the marks. The Examining Attorney submitted a dictionary definition of the term "roadhouse."

Applicant contends that the marks differ in sound, appearance and overall commercial impression. Applicant also points to what it perceives are differences in trade channels and classes of purchasers for its services and those of registrant. Applicant further relies on the absence of any instances of actual confusion. In connection with its arguments, applicant submitted the declarations of its chairman and its general counsel.

We affirm the refusals to register.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the

similarities between the marks and the similarities between the services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

With respect to the involved marks, applicant's marks clearly are dominated by the term "REMINGTON," and registrant's marks are dominated by the term "REMINGTON'S." Thus, the dominant portions of the marks are essentially identical, differing only in the possessive letter "s" in registrant's mark. Being the first words in each of the marks, the terms "REMINGTON" and "REMINGTON'S" are the portions that are most likely to be remembered by consumers and to be used in calling for the services. Further, although we have considered the marks in their entireties, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided [that] the ultimate conclusion rests on consideration of the marks in their entireties." In *re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). For example, "that a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark..." Id. at 751.

Insofar as applicant's marks are concerned, the disclaimed words "HOTEL CORPORATION" and "SUITES HOTEL

CORPORATION" clearly are generic and subordinate to the term "REMINGTON." The registrant's marks likewise are dominated by the term "REMINGTON'S." The highly descriptive/generic terms "ROADHOUSE" in one registration and "ROADHOUSE EST. 1992" in the other have been disclaimed.³ Although we have considered the disclaimed portions in comparing the marks, these highly descriptive/generic portions do not distinguish the marks in any meaningful way. Further, the stylization shown in one of the cited marks does not sufficiently distinguish the mark from applicant's marks.

In sum, the general overall commercial impression engendered by the marks is similar. It is the general overall commercial impression engendered by the marks that must determine, due to the fallibility of memory and the consequent lack of perfect recall, whether confusion as to source or sponsorship is likely. The proper emphasis is thus on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks or service marks. In *re United States Distributors, Inc.*, 229 USPQ 237, 239 (TTAB 1986).

³ The term "roadhouse" is defined as "an inn, a restaurant, or a nightclub located on a road outside a town or city." *The American Heritage Dictionary of the English Language* (3d ed. 1992).

Further, the record is devoid of evidence of any third-party uses or registrations of the same or similar marks for similar types of services to those involved here.

With respect to the similarity between applicant's "hotel management and consultation for others" and "food preparation and bar services and catering services" and registrant's "restaurant services," it should be noted, at the outset, that it is not necessary that the services be identical or even competitive in nature in order to support a finding of likelihood of confusion. It is sufficient that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under circumstances that would give rise, because of the marks used in connection therewith, to the mistaken belief that the services originate from or are in some way associated with the same source. In re International Telephone and Telegraph Corp., 197 USPQ 910 (TTAB 1978).

Applicant's food preparation and bar services and catering services clearly are substantially related (if not virtually identical) to registrant's restaurant services. All involve food and beverage preparation, and applicant has not offered any cogent arguments to distinguish these respective services. Applicant's assertion that its restaurant services are offered exclusively with its

hotels, while registrant's are stand-alone restaurants, is a fact not reflected in the recitations of services. Even if this were the case, confusion still would be likely to occur between the marks.

The bulk of applicant's arguments relate to its services of hotel management and consultation for others.⁴ In the past, the Board has found hotel and restaurant services to be related such that purchasers would ascribe a common origin to them when rendered under similar marks. The Board has found that it is common for hotels to have restaurants as part of their package of services and that hotel chains have evolved from what were initially restaurant businesses only. See: In re The Summit Hotel Corporation, 220 USPQ 927 (TTAB 1983)[restaurants and hotels offer complementary services to the same general class of consumers]; Bonaventure Associates v. Westin Hotel Co., 218 USPQ 537 (TTAB 1983)[restaurant services are an integral part of hotel services]. See also: In re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997)[likelihood of confusion between THE DELTA Café and

⁴ Applicant's recitation of services reads, in relevant part, "hotel management and consultation for others." While we view these services as somewhat different from "hotel services" per se, applicant's arguments and declarations are couched in terms of traditional hotel services rendered to travelers (as opposed to owners of hotels). In either case, confusion is likely to occur between the marks.

design for restaurant services and DELTA for hotel, motel and restaurant services].

Applicant attempts to distinguish its hotel-related services from those of registrant's services and, in this connection, submitted the declaration of Archie Bennett, Jr., applicant's chairman. Mr. Bennett states that applicant's marks are "used in direct connection with its hotel services" and that "[a]pplicant's restaurant services are also offered exclusively in connection with, and physically in, its hotels." Mr. Bennett also states that these "hotel and restaurant services are offered exclusively in connection with one another, and are not mutually independent." Mr. Bennett goes on to offer his views on applicant's services:

Applicant's hotel and restaurant services are geared toward business and vacation travelers, as a specific market. Many of Applicant's consumers have had a long relationship with Applicant's hotel chain, and are willing to pay more for the high quality of its services. Applicant promotes these services so as to establish relationships with its guests in order to keep them returning on future trips.

Generally, and on my information and belief, Applicant's customers make their decision to stay at our hotels, and to take advantage of our services, prior to the time of their trip, many of whom make advance reservations. In

my experience, our customers' decision to take advantage of our services is generally not an "impulse" decision.

We have considered Mr. Bennett's statements but have found them unpersuasive in our likelihood of confusion analysis. Business and vacation travelers also avail themselves of restaurant services. Further, although many business and vacation trips involve advance planning, such trips also may involve a good deal of spontaneous decisions, including at times where to stay and eat while traveling.

The declaration of David Allison Brooks, applicant's general counsel, likewise does not compel a different result in this case. Mr. Brooks attests to applicant's use of the mark REMINGTON HOTEL CORPORATION dating back to March 1993, and that there have been no instances of actual confusion during the time of contemporaneous use of applicant's and registrant's marks. As a *du Pont* factor, the absence of actual confusion weighs, of course, in applicant's favor. The probative weight is limited here, however, by the fact that there are no specifics regarding the extent of use by applicant or registrant. Thus, there is no way to assess whether there has been a meaningful opportunity for confusion to occur in the marketplace. In any event, the test under Section 2(d) of the Trademark Act

is the likelihood of confusion. Weiss Associates Inc. v. HRL Associates Inc., 902 F.2d 1546, 14 USPQ2d 1840, 1842-43 (Fed. Cir. 1990), aff'g, 12 USPQ2d 1819 (TTAB 1989); and Gillette Canada Inc. v. Ranir Corp., 23 USPQ2d 1768, 1774 (TTAB 1992).

Lastly, to the extent that any of the points argued by applicant cast doubt on our ultimate conclusion on the issue of likelihood of confusion, we resolve that doubt, as we must, in favor of the prior registrant. In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); and In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

We conclude that purchasers familiar with registrant's restaurant services rendered under the marks REMINGTON'S ROADHOUSE and REMINGTON'S ROADHOUSE EST. 1992 (stylized) would be likely to believe, upon encountering applicant's marks REMINGTON HOTEL CORPORATION and REMINGTON SUITES HOTEL CORPORATION for hotel management and consultation for others, food preparation and bar services and catering services, that the services originated with or were somehow associated with or sponsored by the same entity.

Decision: The refusals to register are affirmed.

Ser No. 75/305,882